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Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

November 19, 2010

The Hon. Ron Kirk
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk:

Your office has promoted the Trans-Pacific Partnership as the Obama Administration's proposal for a 21st Century Trade Agreement. The success of this agreement is of utmost importance to the U.S. trade strategy and is an opportunity to learn from what hasn't worked in the past to build a better model for future trade agreements. With an unprecedented nine countries included as members in the pending TPP, even more considering inclusion, and a web of existing agreements and treaties that will coexist with the TPP—getting the language right and fully considering the complex implications of what we're agreeing to is more important than ever.

As you know, the TPP negotiations include nine Pacific Rim countries: Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, United States, and Vietnam. We understand they may be joined by Canada and Japan. With one exception, all TPP countries are members of the world's first global health agreement, the Framework Convention on Tobacco Control (FCTC). The exception is the United States, which is home to the world's largest tobacco company, Philip Morris International (PMI).

In January 2010, you sought public comments on the TPP. In its comments, PMI urged U.S. negotiators to continue their practice of treating tobacco trade like any other sector. In particular, PMI asked USTR to expand investor arbitration, incorporate WTO rules to protect tobacco trademarks and brands, and expand cross-border services, including distribution of tobacco. Public health advocates urged your office to reject PMI's request and carve out tobacco from the TPP altogether. The advocates included the Campaign for Tobacco Free Kids¹ (TFK) and the

¹ Matthew Meyers, President of TFK, Comments to USTR: Proposed United States – Trans-Pacific Partnership Trade Agreement [Docket USTR-2009-0041] (January 25, 2010), available at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a831a4> (viewed August 9, 2010). [hereafter, TFK, Comments on TPP].

Center for Policy Analysis on Trade and Health (CPATH).² Just a few weeks later, PMI invoked investor-state arbitration and WTO trademark rules to challenge Uruguay's limits on tobacco brands and packaging. PMI sought arbitration under the Switzerland-Uruguay bilateral investment treaty (BIT). Like most BITs, this one provides the remedy of monetary compensation for an investor's losses.

In effect, PMI wants the TPP to include the same legal tools that it is using against Uruguay. PMI candidly admits that it is targeting tobacco regulations in at least two TPP countries, Australia and Singapore. If successful, PMI will be able to influence a much larger set of countries that want to exceed the "floor" of regulations required by the Framework Convention on Tobacco Control (FCTC). If the TPP covers tobacco trade and investment, PMI could also have a platform to challenge future tobacco regulations in the United States through a subsidiary in another TPP country. Congress recently delegated authority to the Food and Drug Administration to regulate tobacco products; this delegation is similar to the authority that PMI is targeting in Singapore.

In light of last week's FDA decision to require new larger and more graphic warning labels on cigarettes sold in the United States—the threat grows that PMI will target domestic regulations through investor-state arbitration brought by one of its foreign subsidiaries.

We oppose the inclusion of investor-state provisions in an investment chapter in the TPP and request for tobacco to be specifically carved out of the TPP and any future trade agreement.

Yours sincerely,

Handwritten signature of Senator Troy Jackson in black ink, with the initials "CLB" written above the signature.

Senator Troy Jackson, Chair

Handwritten signature of Representative Margaret Rotundo in black ink, with the initials "CCR" written above the signature.

Representative Margaret Rotundo, Chair

cc: Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree
Governor John E. Baldacci
Senator Elizabeth Mitchell, President
Representative Hannah Pingree, Speaker

² Joseph Brenner and Ellen Shaffer, co-directors of CPATH, Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement [Docket: USTR-2009-0041] (January 25, 2010), available at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2> (viewed August 9, 2010). [hereafter, CPATH, Comments on TPP]